No. 82-2115

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, as Trustee under a Trust Agreement, dated March 17, 1975, and known as Trust R-1809,

Appellant,

v.

EDWARD J. ROSEWELL, County Treasurer and Ex-Officio County Collector of Cook County, Illinois; THOMAS C. HYNES, Assessor of Cook County, Illinois; and HARRY H. SEMROW and SEYMOUR ZABAN, Commissioners of the Board of (Tax) Appeals of Cook County, Illinois,

Appellees.

On Appeal From The Supreme Court Of Illinois

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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I.

THE QUESTIONS ARE PROPERLY PRESENTED.

The county taxing officials have raised three reasons why the questions presented by the Jurisdictional Statement are not properly presented. Each reason lacks merit.

A.

The county taxing officials argue that, under state law, question 1 was not timely raised in the state proceedings. However, since the Supreme Court of Illinois actually considered and decided question 1, this Court has jurisdiction to review this case by appeal. *Orr v. Orr*, 440 U.S. 268, 274-275, 59 L.Ed.2d 306, 99 S.Ct. 1102 (1979).

B.

The county taxing officials argue that taxpayer has no standing to raise question 1, but cite no authority. Their position is incorrect. Taxpayer has standing to challenge the constitutionality of the legal remedy because the tax bills had been issued and the collector's suit to obtain a judgment pursuant to that legal remedy was imminent. (Ill.Rev.Stat., 1979, ch. 120, par. 710). *Doe v. Jones*, 327 Ill. 387, 388, 392, 158 N.E. 793, 55 A.L.R. 303 (1927); *Cramp v. Bd. of Public Instruction*, 368 U.S. 278, 282-283, 7 L.Ed.2d 285, 82 S.Ct. 275 (1961). Cf. 42 Am. Jur.2d, Injunctions, §187-191 and cases cited therein.

C.

The Supreme Court of Illinois affirmed the dismissal of taxpayer's federal claim and ordered the dismissal of taxpayer's state equitable action seeking prohibitory relief. Nothing remains to be done by the trial court except the ministerial act of entering the judgment directed by the Supreme Court of Illinois. Thus, the decision of the Supreme Court of Illinois is undoubtedly a final judgment or decree. *Weston v. City Council of Charleston, S.C.*, 27 U.S. 449, 463-464, 2 Pet. 449, 7 L.Ed. 481 (1829); *Madruga v. Superior Court*, 346 U.S. 556, 98 L.Ed. 290, 74 S.Ct. 298 (1954).

However, the county taxing officials raise the novel argument that taxpayer's claims are not "ripe" for adjudication, citing *Boyle v. Landry*, 401 U.S. 77, 27 L.Ed.2d 696, 91 S.Ct. 758 (1971) and *Younger v. Harris*, 401 U.S. 37, 27 L.Ed.2d 669, 91 S.Ct. 746 (1971). Reliance on those cases is misplaced since they involve the doctrine of abstention. This Court has never ruled that abstention is applicable when review by appeal is sought pursuant to 28 U.S.C. §1257. Also, abstention is never proper where the state court has already actually decided the issues in the same case and there are no unsettled questions of state law. *Orr v. Orr*, 440 U.S. 268, footnote 8 at 278, 59 L.Ed.2d 306, 99 S.Ct. 1102 (1979).

Surely, questions 3 and 4 presented in the Jurisdictional Statement (and to which no response has been made) are completely ripe for decision by this Court. A decision not to review these substantial and unsettled questions concerning the scope of relief available in state court under 42 U.S.C. §1983 presupposes that the legal remedy, as it existed when taxpayer filed this action, was adequate and, despite the unique facts of this case, a post-deprivation remedy is constitutionally allowable.

Likewise, question 1 is ripe for decision by this Court because it was specifically ruled upon by the Supreme Court of Illinois. Taxpayer concedes that question 2 might not be ripe for decision by this Court if presented alone. However, it is joined with questions properly raised; it could not have been raised in the proceedings below; and, taxpayer has suggested, as an alternative, that remand of this case for presentation of question 2 to the Supreme Court of Illinois would be appropriate.

The questions are properly presented.

II.

REVIEW OF THIS CASE IS NOT PRECLUDED BY THIS COURT'S DECISION IN *ROSEWELL v. LA SALLE NATIONAL BANK*.

The county taxing officials argue that no substantial question is raised because this appeal merely seeks to relitigate *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 67 L.Ed.2d 464, 101 S.Ct. 1221 (1981).

In *Rosewell* this Court stated that the taxpayer there had not asserted any "federal right" to receive interest and, for that reason, this Court expressed no view on the issue. (450 U.S., at 515).

In this appeal, taxpayer claims that it has a federal right to receive earned interest. Therefore, review of this case is not precluded by this Court's decision in *Rosewell*.

Finally, taxpayer believes that misleading assertions concerning the facts in this case have been made on page 3 of the Motion to Dismiss or Affirm. Therefore, concurrent with the filing of this Brief in Opposition, taxpayer has requested that, pursuant to Rule 13.1 of this Court, the Clerk of the Supreme Court of Illinois certify pages R172-175 of the record and provide for their transmission to this Court. Taxpayer believes this small portion of the record is essential to a proper understanding of this case in light of the assertions made in the Motion to Dismiss or Affirm.

Respectfully submitted,

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